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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,062	12/31/2001	William R. Matz	BS01376	9118
38516	7590	09/08/2008	EXAMINER	
SCOTT P. ZIMMERMAN, PLLC PO BOX 3822 CARY, NC 27519				STRANGE, AARON N
ART UNIT		PAPER NUMBER		
2153				
		MAIL DATE		DELIVERY MODE
		09/08/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/039,062	MATZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	AARON STRANGE	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 May 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 45-66 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 45-66 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The Examiner would like to note that the present application has been reassigned to a new Examiner.

***Response to Arguments***

2. Applicant's arguments filed 5/22/2007 have been fully considered but they are not persuasive.

3. With regard to claim 45, and Applicant's assertion that Kramer does not disclose "receiving multiple data streams" and then "selecting one of the multiple data streams" based on an evaluation of tags (Remarks 8), the Examiner respectfully disagrees. Kramer clearly discloses selecting a particular stream ("the most appropriate") from a plurality of received streams, based on tags included with the streams (col. 9, ll. 48-51).

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 66 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. Claim 66 recites a “computer program product storing processor executable instructions”, but fails to limit the computer program product to any particular storage medium. Since the specification of the present application describes “communications media” that carry “computer readable instruction, program modules, or other data” (Spec. 8), the broadest reasonable interpretation of the term “computer program product” includes such media.

“Communication media” such as carrier waves are non-statutory, since they do not fall within any of the four statutory categories of invention. Since the claim is not limited to statutory subject matter, it is non-statutory.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 45-66 are rejected under 35 U.S.C. 102(e) as being anticipated by Kramer et al. (US 6,327,574).

9. With regard to claim 45, Kramer discloses a method of targeting content, comprising:

receiving multiple data streams, each data stream comprising a content item (commercials and/or announcements) and at least one tag (selection criteria)(col. 9, II. 48-51) (also a webpage embodiment at col. 7, I. 55 to col. 8, I. 40);

storing a user profile (col. 10, II. 41-45) having at least one profile tag (characteristic value)(col. 10, II. 51-61);

evaluating the at least one tag to the at least one profile tag (the selection criteria of each content item are compared with the user profile)(col. 8, II. 34-37; col. 9, II. 51-53); and

selecting one of the multiple data streams based on the evaluation (the “most appropriate” content is selected)(col. 8, II. 34-37; col. 9, II. 51-53).

10. With regard to claim 46, Kramer further discloses defining the user profile based on usage (Col 3, lines 10-14).

11. With regard to claim 47, Kramer further discloses defining the user profile based on manual input (Col 10, lines 32-33 and Col 14, lines 36-42); (information manually entered on forms).

12. With regard to claim 48, Kramer further discloses that evaluating the at least one tag comprises scoring the at least one tag (product tags and consumer tags are used to generate an appeal score)(col. 11, ll. 17-21).

13. With regard to claim 49, Kramer further discloses that evaluating the at least one tag comprises correlating the at least one tag to the at least one profile tag (tags from the product and consumer profiles are correlated to determine an appeal score)(col. 11, ll. 17-21).

14. With regard to claim 50, Kramer further discloses storing the selected one of the multiple data streams (data stream must be stored, at least temporarily, to be displayed, particularly with respect to web page content)(col. 8, ll. 41-63; col. 9, ll. 51-53).

15. With regard to claim 51, Kramer further discloses filtering out unselected data streams (unselected streams are not displayed)(col. 9, ll. 51-53).

16. With regard to claim 52, Kramer further discloses receiving a tag identifier associated with the at least one tag (an identifier associated with the tag is inherently received, so that the recipient can properly identify which tag contains which value).

With regard to claim 53, Kramer further discloses that receiving the multiple data streams comprises receiving a classification associated with the at least one tag

(information about merchants and products includes classification information)(col. 10, II. 33-34).

17. With regard to claim 54, Kramer further discloses detecting an insertion event (content is dynamically inserted based on user requests and profile information)(col. 6, II. 22-24; col. 8, II. 24-31; col. col. 9, II. 45-53).

18. With regard to claim 55, Kramer further discloses causing presentation of the selected one of the multiple data streams (selected content is displayed)(col. 8, II. 34-37; col. 9, II. 51-53).

19. Claims 56-66 are rejected under the same rationale as claims 45-55, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are taught by the above cited art.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hunter et al. (US 2002/0056118) (e.g., ¶140-145) and Walters et al. (US 5,440,334) (e.g., col. 4, II. 10-27) both disclose systems for selecting one stream from a plurality of received streams, based on profile tags associated with the streams and profile tags associated with customers.

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON STRANGE whose telephone number is (571)272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenton B. Burgess/  
Supervisory Patent Examiner, Art Unit 2153

/A. S./  
Examiner, Art Unit 2153